STAND. COM. REP. NO. 2443

Honolulu, Hawaii

FEB 2 7 2014

RE: S.B. No. 2687

S.D. 1

Honorable Donna Mercado Kim President of the Senate Twenty-Seventh State Legislature Regular Session of 2014 State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred S.B. No. 2687 entitled:

"A BILL FOR AN ACT RELATING TO LIMITATION OF ACTIONS,"

begs leave to report as follows:

The purpose and intent of this measure is to allow a victim of child sexual abuse to bring a civil action against the victim's abuser or an entity, except for the State or counties, when the entity was grossly negligent, if the statute of limitations for filing a civil claim has lapsed and the victim has not yet attained the age of fifty-five.

Your Committee received testimony in support of this measure from the Hawaii State Commission on the Status of Women, The Sex Abuse Treatment Center, Rainbow Family 808.com, and nine individuals. Testimony in opposition to this measure was submitted by the Department of the Attorney General and Hawaii Catholic Conference. Your Committee received comments on this measure from two individuals.

Your Committee finds that child sexual abuse is an epidemic that unfortunately is not adequately addressed because a vast majority of child sexual abuse victims fail to report their sexual assaults to the authorities. The Sex Abuse Treatment Center testified that many children do not disclose sexual abuse immediately. Studies have estimated that between sixty to eighty percent of child sexual abuse victims withhold disclosure.

Furthermore, studies examining latency in disclosure report an average delay of three to eighteen years.

In response to this epidemic, the Legislature passed Act 68, Session Laws of Hawaii 2012 (Act 68), to extend the statute of limitations for civil actions brought by a victim of sexual offenses as a minor against the person who committed the act and establish a two-year window to allow a victim of sexual abuse to bring a cause of action if bringing such an action was barred due to the expiration of the statute of limitations that was in effect prior to April 24, 2012. Your Committee further finds that the two-year window to allow a victim of child sexual abuse to bring a cause of action that is otherwise barred will sunset on April 24, 2014, if legislative action is not taken. This measure extends this window for a victim to file a cause of action if the statute of limitations has lapsed and the victim has not yet attained the age of fifty-five.

Your Committee notes the concerns raised by the Department of the Attorney General that extending the two-year window to when the victim attains the age of fifty-five could severely prejudice the defendants in a lawsuit who may not be the accused perpetrator and an entity that is subject to the law. The Department explained that this extension could potentially allow a victim to bring a cause of action more than four decades after the sexual assault occurred during which time memories fade, witnesses move or pass away, and documents are lost or destroyed. Thus, the Department testified that the two-year window was a reasonable period of time to allow victims the opportunity to have a second chance to file a claim that they were otherwise barred from filing and the two-year window should sunset. However, your Committee recognizes that it may take years, sometimes decades, for victims of child sexual abuse to develop the strength and courage to report incidences of child sexual abuse. Therefore, extending the window to when the victim attains the age of fifty-five provides additional time for a victim of child sexual abuse to come forward.

Your Committee further notes the concerns raised by the Department of the Attorney General that this measure could potentially result in the filing of false claims, especially when the supporting evidence may no longer be available or memories of the incident have faded. However, your Committee strongly believes that Act 68, codified under section 657-1.8, Hawaii Revised Statutes, provides adequate mechanisms and procedures to

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prevent false claims, including requiring the filing of a certificate of merit to the court that sets forth in reasonable detail the facts and opinions relied upon to conclude that there is a reasonable basis to believe that the plaintiff was subject to sexual abuse as a child and allowing the defendant to recover attorney's fees if the court determines that a false accusation was made with no basis in fact and with malicious intent.

Your Committee has amended this measure by:

- Adopting the language suggested by the Hawaii State (1) Commission on the Status of Women to change the standard used by the court to award damages against a legal entity, except for the State or counties, from a finding of gross negligence to a finding of negligence on the part of the legal entity;
- Adopting the language suggested by an individual to (2) prohibit the court, plaintiff, or certain individuals from being required to disclose the contents of the sealed certificate of merit that is filed with the court;
- (3) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- Making technical, nonsubstantive amendments for the (4)purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2687, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2687, S.D. 1, and be placed on the calendar for Third Reading.

> Respectfully submitted on behalf of the members of the Committee on Judiciary and Labor,

The Senate Twenty-Seventh Legislature State of Hawai'i

Record of Votes Committee on Judiciary and Labor JDL

Bill / Resolution No.:*	Committee Referral:		Date: /		
SB 2687	JDL		2/7/14		
The committee is reconsidering its previous decision on this measure.					
If so, then the previous decision was to:					
The Recommendation is:					
Pass, unamended Pass, with amendments Hold Recommit 2312 2311 2310 2313					
Members		Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)					
SHIMABUKURO, Maile S.L. (VC)					
GABBARD, Mike		V			
GALUTERIA, Brickwood		/			
IHARA, Jr., Les					
SOLOMON, Malama			/		
SLOM, Sam					
TOTAL	/	5	1	0	/
Recommendation:	7.	Not Adopted			
Chair's or Designee's Signature:					
Distribution: Original File with Committee Re	Yellow eport Clerk's Office		Pink Goldenrod Drafting Agency Committee File Copy		

*Only one measure per Record of Votes